

CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
DRAFT CARPET STEWARDSHIP PROGRAM ENFORCEMENT PLAN
INFORMATIONAL ITEM
May 2017

SUMMARY

Under California law, manufacturers that offer to sell carpet in California must operate under a carpet stewardship plan approved by the Department of Resources Recycling and Recovery (CalRecycle or Department). On April 21, 2017, the Department disapproved the Revised Carpet America Recovery Effort (CARE) California Carpet Stewardship Plan 2017-2021 (CARE 2017-2021 Plan). CalRecycle disapproved the CARE 2017-2021 Plan because it does not conform to the statutory requirements of Public Resources Code (PRC) §42970 et seq. While CARE's previous California Carpet Stewardship Plan (2016 CARE Plan) expired on December 31, 2016, CalRecycle allowed manufacturers to continue operating consistent with the 2016 CARE Plan until June 21, 2017, without being subject to penalties for selling carpet in California.

After CalRecycle presents a final Enforcement Plan on June 20, 2017, manufacturers must do the following to avoid being subject to penalties: (1) Continue to operate under the 2016 CARE Plan; (2) Choose one of the compliance option described in the final Enforcement Plan; and (3) Undertake the additional activities described in the final Enforcement Plan, including the submission of a carpet stewardship plan for CalRecycle's review and approval.

Draft Enforcement Plan Provides Information to Manufacturers

Consistent with the April 21, 2017 decision, CalRecycle has developed a draft Enforcement Plan that outlines the steps manufacturers must take to comply with California law. This draft Enforcement Plan also describes how CalRecycle is initiating a process to notify and educate manufacturers about statutory requirements and potential liabilities. CalRecycle will present a final Enforcement Plan at the June 20, 2017, Monthly Public Meeting.

Wholesalers and Retailers Not Affected

Consistent with the April 21, 2017 decision, wholesalers and retailers that purchase and sell carpet in California can continue to operate consistent with the 2016 CARE Plan without being subject to penalties. As such, this draft Enforcement Plan does not address wholesalers and retailers. If this situation changes, and prior to taking any enforcement against wholesalers and retailers, CalRecycle would develop and present to the public an additional enforcement plan or amend the final version of this draft Enforcement Plan.

Requirements and Responsibilities

Assembly Bill 2398 (Chapter 681, Statutes of 2010) established the first mandatory carpet stewardship program in the country. The purpose of the law was to increase the amount of postconsumer carpet diverted from landfills and recycled into secondary products. The law established shared responsibility between carpet manufacturers, wholesalers and retailers for the end-of-life management of carpet.

Public Resources Code §42970-42983, as well as Title 14, California Code of Regulations (CCR), §18940-18948 outline the requirements of carpet stewardship organizations, manufacturers, wholesalers, and retailers for the end-of-life management of carpet. Under these requirements, manufacturers that offer to sell carpet in California must operate under a stewardship plan approved by CalRecycle or be subject to potential penalties. Manufacturers of carpet may choose to submit an individual plan, or may choose to operate under an approved plan submitted by a carpet stewardship organization.

CalRecycle is responsible for approving or disapproving carpet stewardship plans submitted by individual manufacturers or their designated carpet stewardship organization. Public Resources Code §42970, 42973, and 42975 and CCR §18942-18943 establish requirements for approval or disapproval of carpet stewardship plans. The law and regulations require the carpet stewardship plan to include specific goals and program elements to ensure “continuous meaningful improvement in the rates of recycling and diversion of postconsumer carpet.” (PRC §42975.)

Statute provides that a manufacturer, wholesaler, or retailer that offers a carpet for sale, or who offers a carpet for promotional purposes, is subject to penalties of up to \$10,000 per day if the manufacturer of the carpet is not included in a Department approved carpet stewardship plan. (PRC §42974, §42973 and §42978.)

CalRecycle’s Commitment to Outreach

Over the past five years, CalRecycle has been committed to reaching out to CARE and its member manufacturers. CalRecycle’s outreach has included meeting with CARE quarterly, or more frequently as needed, holding regular phone conversations, meeting with the CARE Board, and attending and speaking at annual CARE conferences. In addition, CalRecycle has provided formal input to CARE and its member manufacturers via emails, letters and public agenda items on carpet stewardship plan revisions, CARE program performance, and the proposed CARE 2017-2021 Plan.

In addition to this draft Enforcement Plan, CalRecycle has continued outreach efforts and developed information to educate carpet manufacturers on the requirements of statute and steps for achieving compliance, including how to submit carpet stewardship plans. CalRecycle encourages stakeholder engagement and continues to implement outreach efforts. CalRecycle’s recent outreach includes:

- April 19, 2017 – CalRecycle staff met with CARE to discuss findings regarding deficiencies in the disapproved CARE 2017-2021 Plan.
- April 21, 2017 – CalRecycle decision on the CARE 2017-2021 Plan posted to the public website.
- April 21, 2017 – CalRecycle provided additional information. The information included:
 - Posting of a Frequently Asked Questions document explaining the April 21, 2017 decision.
 - Notice of the upcoming May 16, 2017, Stewardship Plan Workshop.
 - Notice of consideration of the draft Enforcement Plan at the CalRecycle May 16, 2017, Monthly Public Meeting.
 - Notice of consideration of a final Enforcement Plan at the CalRecycle June 20, 2017, Monthly Public Meeting.

- May 3, 2017 – CalRecycle initiated weekly discussions with CARE regarding required plan components.
- May 8, 2017 – CalRecycle sent a letter notifying manufacturers that CARE does not have an approved carpet stewardship plan. The letter also encouraged manufacturers to participate in CalRecycle’s May and June Monthly Public Meetings and CalRecycle’s May 16 Stewardship Plan Workshop.
- May 9, 2017– CalRecycle staff attended a CARE conference and presented an update on CalRecycle’s April 21, 2017 decision, and encouraged participation at CalRecycle’s May 16 Monthly Public Meeting and Stewardship Plan Workshop for additional information.
- May 16, 2017– CalRecycle will hold a Stewardship Plan Workshop to provide guidance on establishing a carpet stewardship organization and submitting a carpet stewardship plan.

CalRecycle will continue public outreach efforts and will continue to work with manufacturers to achieve compliance. Furthermore, the Department remains receptive and responsive to any carpet stewardship plans submitted by CARE, manufacturers, or carpet stewardship organizations representing manufacturers. Staff will review any such plan within 60 days of submission, consistent with PRC 42973(a)(1) and make a recommendation to the Director on whether the plan complies with state law.

DRAFT ENFORCEMENT PLAN IN THE ABSENCE OF AN APPROVED CARPET STEWARDSHIP PLAN

Currently CalRecycle is allowing manufacturers that were previously complying with the 2016 CARE Plan to continue to operate under that plan without being subject to penalties for offering carpet for sale in California. This draft Enforcement Plan addresses how CalRecycle will allow those manufacturers that were previously complying with the 2016 CARE Plan to continue to provide carpet for sale in California without being subject to penalties.

This draft Enforcement Plan does not address wholesalers and retailers that purchase and sell carpet in California, and CalRecycle will not take any action against them at this time. If at some time in the future CalRecycle finds it necessary to take enforcement action against retailers and wholesalers, CalRecycle will develop a new enforcement plan or amend the final version of this draft Enforcement Plan and will make the plan available for public input prior to finalization and implementation.

CalRecycle will provide notice to manufacturers of the compliance options and timeframes by which manufacturers can continue to avoid penalties. CalRecycle will provide this notice to the manufacturers listed on CARE’s March 2017 list of manufacturers covered by its 2016 CARE Plan. The list is located at: <http://www.calrecycle.ca.gov/Carpet/MfrBrands/2017/Mfr0315.pdf>.

Enforcement Plan Steps

Step 1 - Notification and Compliance Process

On or before July 1, 2017, CalRecycle will provide a notice to manufacturers that includes:

- A background and summary explaining that CARE no longer has an approved carpet stewardship plan.
- A deadline of August 15, 2017, for each manufacturer to reply with a statement regarding which option the manufacturer intends to utilize in order to achieve compliance and continue to avoid penalties.
- Two compliance options as follows:

Compliance Option A - The manufacturer provides a written response to CalRecycle, by August 15, 2017, confirming the manufacturer's intention to remain a member of CARE. The response shall also provide:

- A statement confirming the intention to meet the statutory obligations through membership in CARE.
- A statement confirming membership in good standing with CARE.
- A statement confirming continued payment of assessments to CARE.
- A statement acknowledging that CARE will need to submit a complete carpet stewardship plan to the Department by October 19, 2017, in order for the manufacturer to avoid penalties.

Compliance Option B - The manufacturer provides a written response to CalRecycle, by August 15, 2017, confirming the manufacturer's intention to either (1) join an alternative carpet stewardship organization that will be submitting a carpet stewardship plan, or (2) submit an individual carpet stewardship plan. The response shall also include the following:

- A statement confirming that the manufacturer will continue to provide funding and identify the mechanism the manufacturer will utilize to provide funding to support the carpet recycling infrastructure during the interim period. Mechanisms could include:
 - Continuing to pay CARE assessments during the interim period.
 - An alternative manner, supported by documentation, for providing support to the carpet recycling infrastructure in the interim.
- A statement acknowledging the obligation to submit, either individually or through a carpet stewardship organization, a complete carpet stewardship plan to the Department by October 19, 2017, in order to avoid potential penalties.

Step 2 – CalRecycle Actions

If a manufacturer does not respond according to CalRecycle's first notice by August 15, 2017, CalRecycle will send a second and final notice. The second notice will indicate that CalRecycle has not received the requested reply and that CalRecycle intends to initiate an enforcement action if the manufacturer does not respond to the second notice within seven days.

If a manufacturer does not reply to the first and second notice, CalRecycle may pursue penalties against the noncompliant manufacturer through an Accusation. Penalties related to a manufacturer's failure to timely submit a notification to CalRecycle pursuant to Step 1 above may accrue beginning on August 16, 2017.

A manufacturer or stewardship organization may submit a carpet stewardship plan at any time submitted pursuant to the compliance option in Step 1 above.

However, if a manufacturer providing carpet for sale has not submitted a carpet stewardship plan by October 19, 2017, CalRecycle may pursue penalties against the noncompliant manufacturer through an Accusation. Penalties related to a manufacturer's failure to timely submit a carpet stewardship plan to CalRecycle by October 19, 2017 may accrue beginning on October 20, 2017.

Upon receipt of any carpet stewardship plan submitted pursuant to the compliance option in Step 1 above, CalRecycle will initiate a 60 day review process per statutory requirements in PRC 42973(a)(1). If after this review CalRecycle disapproves a carpet stewardship plan, the carpet stewardship plan may be resubmitted within 60 days. However, if CalRecycle does not receive a resubmitted carpet stewardship plan or if CalRecycle disapproves the resubmitted carpet stewardship plan, the noncompliant manufacturer without an approved carpet stewardship plan may be subject to penalties. Penalties may

accrue from July 1, 2017. CalRecycle will prioritize enforcement efforts and will consider the factors in Step 3 when calculating the amount of the penalty to seek against a noncompliant manufacturer.

Step 3 – Enforcement Priorities and Considerations Regarding Penalty Amounts

CalRecycle will prioritize its enforcement efforts against those manufacturers that have failed to respond as set forth in the final Enforcement Plan.

CalRecycle will prioritize its enforcement actions, and the amount of penalty sought against manufacturers, using relevant factors outlined in PRC §42978 and 14 CCR §18945.2, including:

- (a) The nature, circumstances, extent, and gravity of the violation(s).
- (b) The number and severity of the violation(s).
- (c) Evidence that the violation was intentional, knowing or negligent.
- (d) The size of the violator.
- (e) History of violation(s) of the same or similar nature.
- (f) The willfulness of the violator's misconduct.
- (g) Whether the violator took good faith measures to comply with this chapter and the period of time over which these measures were taken.
- (h) Evidence of any financial gain resulting from the violation(s).
- (i) The economic effect of the penalty on the violator.
- (j) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community.
- (k) Any other factor that justice may require.

Step 4 – Monitoring

CalRecycle enforcement staff will review the status of compliance to determine the need to adjust the Enforcement Plan. Staff will identify if there is evidence that compliance is being affected by unforeseen circumstances or conditions which were outside manufacturers' control.

Send written comments or questions by May 30, 2017, to: Krysty Emery at CarpetEnforcement@calrecycle.ca.gov